



COMPARATIVE ANALYSIS- FDI, FII AND QFI

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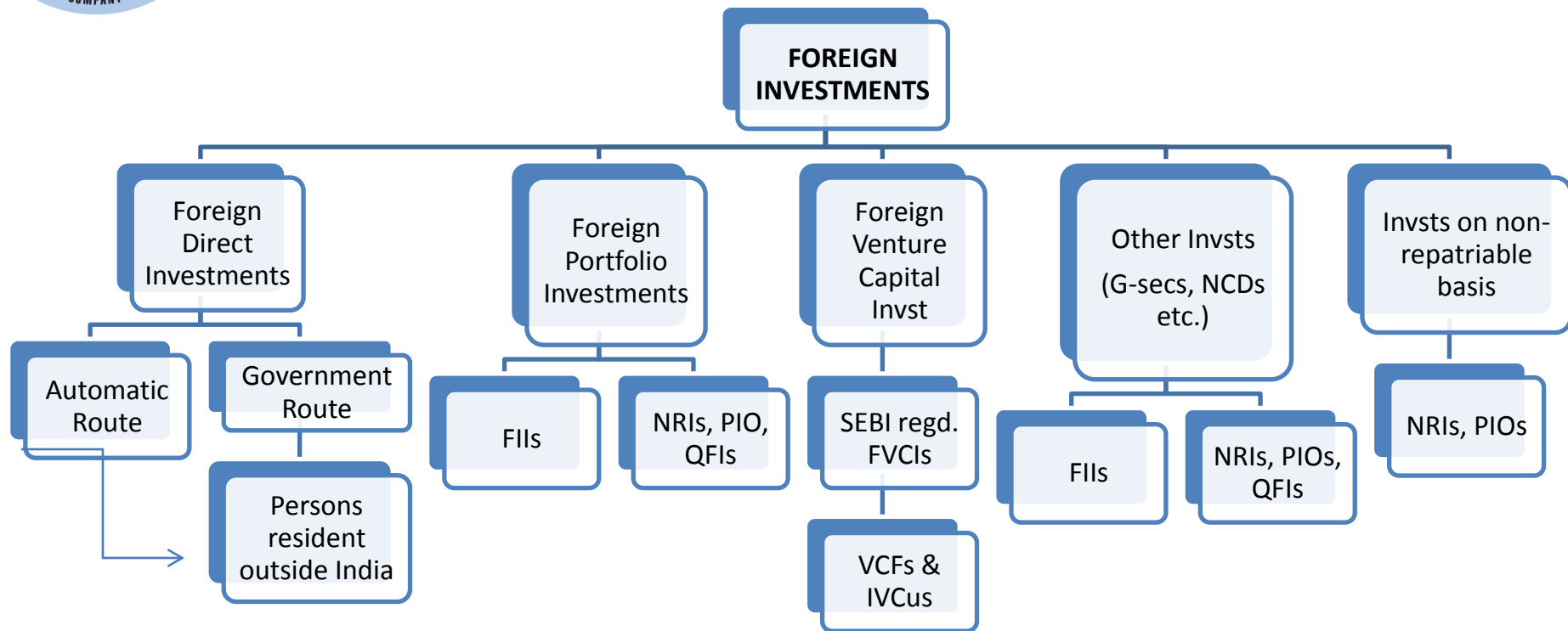


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FOREIGN INVESTMENTS IN INDIA - A SCHEMATIC REPRESENTATION





MEANING

FDI

•‘FDI’ means investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000 (Original notification is available at

http://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=17

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FII

•Foreign Institutional Investor’(FII) means an entity established or incorporated outside India which proposes to make investment in India and which is registered as a FII in accordance with the SEBI (FII) Regulations 1995.

QFI

•A Qualified Foreign Investor (QFI)’ means a non-resident investor (other than SEBI registered FII and SEBI registered FVCI) who meets the KYC requirements of SEBI for the purpose of making investments in accordance with the regulations/ orders/circulars of RBI/SEBI.



ELIGIBILITY

FDI	FII	QFI
<ul style="list-style-type: none"> • A non-resident entity (other than a citizen or entity of Pakistan) • A citizen or an entity from Bangladesh – only under Government Route •NRIs and citizens of Nepal & Bhutan •Erstwhile Overseas Corporate Bodies incorporated outside India and not under the adverse notice of RBI as incorporated non-resident entities. (However, OCBs have been derecognized as a class of investors w.e.f. September 2003) 	<p>An institution established or incorporated outside India for example:</p> <ul style="list-style-type: none"> • Asset Management company, •Investment manager, •mutual fund, pension fund, charitable endowment/ university funds •Foreign individuals (other than NRIs) subject to a minimum net worth criteria of US\$ 50 million 	<p>Individuals, group or associations-</p> <ul style="list-style-type: none"> • Resident in a country which is a member of Financial Action Task Force (FATF); or a • A country that is a member of a group which is a member of FATF ; and • Resident in a country signatory to the MMOU of International Organization of Securities Commission (IOSCO); or • Signatory of a bilateral MOU with SEBI. <p>QFIs do not include FIIs/ Sub accounts/ Foreign Venture Capital Investors.</p>



GOVERNING AUTHORITY

FDI	FII	QFI
Reserve Bank of India	SEBI	SEBI

GOVERNING REGULATIONS

Consolidated FDI Policy, 2012 and Foreign Exchange Management Act, 1999 (read with FEMA Regulations)	SEBI (Foreign Institutional Investor) Regulations, 1995 in addition to those applicable to FDI.	No specific regulation. Guidelines issued by SEBI & the RBI from time to time.
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REGISTRATION REQUIREMENTS

Not Required unless expressly set out by applicable regulations such as FVCIs, FIIs etc.	Required	Not Required
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ELIGIBLE INVESTEE COMPANIES

FDI	FII	QFI
<ul style="list-style-type: none"> • Indian Companies • NRI or PIO resident outside India can invest in Partnership Firm or a Proprietary Concern subject to conditions • FVCIs allowed to invest in Indian Venture Capital Undertakings (IVCUs)/ Venture Capital Funds (VCFs)/ other companies • FDI in trusts other than VCFs not permitted • FDI in LLPs permitted, subject to conditions • FDI in resident entities other than specified above not permitted 	<p>Indian Companies</p>	<p>Listed Indian Companies through SEBI registered Depository Participants (DPs)</p>



INVESTMENT LIMITS

FDI	FII	QFI
<p>Basis of sectoral caps separate for each sector.</p>	<p>1. Individual Investment Limits:</p> <ul style="list-style-type: none"> Investment in equity shares on own account – 10% Investment on behalf of each sub account – 10% Investment in each sub-account of foreign corporate/ individuals – 5% <p>2. Aggregate Investment Limits: For all FIIs/ subaccounts of all FIIs -24% (can be increased upto sectoral cap pursuant to passing of specific resolution).</p>	<p>1. Individual Investment Limit in Equity shares: 5% of paid up capital of Indian Company</p> <p>2. Aggregate Investment Limits: 10% of paid-up capital of Indian Company</p> <p>3. Equity Schemes of Mutual Funds: Aggregate investment under direct and indirect route restricted to US\$ 10 billion.</p>



TYPE OF SECURITIES

FDI	FII	QFI
<ul style="list-style-type: none"> •Equity shares •Fully & mandatorily convertible debentures and/ or preference shares •Preference shares such as non-convertible, optionally convertible or partially convertible – in accordance with ECB guidelines 	<ul style="list-style-type: none"> •Primary and secondary market securities, listed or to be listed •Units of schemes floated by domestic mutual funds, whether listed or not •Derivatives traded on recognized stock exchanges •Commercial paper •Security receipts (issued under SARFAESI). 	<ul style="list-style-type: none"> •Equity shares listed on a recognized stock exchanges •Equity shares offered to public in India •Equity and debt schemes of Mutual Funds



KYC Norms

FDI	FII	QFI
<p>Applicable</p> <p>(General KYC Norms, in prescribed form and generally applicable on remittance).</p>	<p>Applicable.</p> <p>More detailed and strict KYC norms to be complied with.</p>	<p>Applicable.</p> <p>More detailed and strict KYC norms to be complied with.</p>



HOLDING (PUBLIC OR PROMOTER)

FDI	FII	QFI
Listed Companies		
<ul style="list-style-type: none"> • Maximum Promoter Holding permissible – 75% of the share capital • SEBI (ICDR) Regulations, 2009 clearly defines “promoter” & “Promoter group” • FDI in equity will be subject to sectoral cap on foreign investment as specified in the consolidated FDI Policy. 	<ul style="list-style-type: none"> • Maximum Promoter Holding permissible – 75% of the share capital. • ICDR Regulations provisos have been inserted in definition of Promoter & Promoter group to the following effect:- <ul style="list-style-type: none"> (i) FIIs shall not be deemed to be promoter/promoter group merely because 10% or more of the equity share capital of the issuer is held by such person. (ii) FIIs shall be treated as promoter/promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them. • Investments by FII in equity will be subject to the Sectoral caps as specified in the consolidated FDI Policy 	<ul style="list-style-type: none"> • Permitted to invest only in equity shares of listed Indian companies and equity shares of Indian companies which are offered to public in India • Individual and aggregate investment limits for the QFIs shall be 5% and 10% respectively of the paid up capital of an Indian company. • However, these limits for QFI investment in equity shares shall also be within such overall FDI sectoral caps.



HOLDING (PUBLIC OR PROMOTER)

FDI	FII	QFI
Unlisted Companies		
<ul style="list-style-type: none"> •Subject to sectoral caps as specified in the consolidated policy. •There will be no limit on promoter holding in case of Unlisted Companies. 	<ul style="list-style-type: none"> •Subject to sectoral caps as specified in the consolidated policy. •There will be no limit on promoter holding in case of Unlisted Companies. 	<ul style="list-style-type: none"> • N.A



INCLUSION IN DEFINITION OF QIBs AS PER ICDR REGULATIONS

FDI	FII	QFI
<p>FDI is included in QIBs only to the extent of registered FVCI, and registered FII & their sub-account (other than a sub-account which is a foreign corporate or foreign individual).</p>	<p>Definition of QIBs under ICDR Regulations, includes a registered FII and sub-account (other than a sub-account which is a foreign corporate or foreign individual), registered with the SEBI.</p>	<p>Not included</p>



PROHIBITED SECTORS

FDI	FII	QFI
<p>(a) Retail Trading (except single brand product retailing)</p> <p>(b) Lottery Business including Government /private lottery, online lotteries, etc.</p> <p>(c) Gambling and Betting including casinos etc.</p> <p>(d) Chit funds</p> <p>(e) Nidhi company</p> <p>(f) Trading in Transferable Development Rights (TDRs)</p> <p>(g) Real Estate Business or Construction of Farm Houses</p> <p>(h) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes</p> <p>(i)Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).</p> <p>Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.</p>	<p>In addition to Chit funds, Nidhi Companies, TDRs, Real estate business* or construction of farm houses, FIIs are prohibited from investing in the following:</p> <p>(a)Capital of Asset Reconstruction Companies (ARCs)</p> <p>(b)Agricultural or plantation activities</p>	<p>Same as FDI</p>

Note: “Real estate business” means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.



SECTORAL CAPS*

*Subject to other conditions specified in Consolidated FDI Policy issued by DIPP from time to time

Activity	Route	FDI	FII	QFI
SERVICES SECTOR				
Terrestrial Broadcasting FM (FM Radio)	Government route.	26% (FDI, NRI & PIO investments and portfolio investment)	To the extent invested under PIS subject to FDI cap of 26%	To the extent invested under PIS subject to FDI cap of 26%
Cable Network	Government route.	49% (FDI, NRI & PIO investments and portfolio investment)	To the extent invested under PIS subject to FDI cap of 49%	To the extent invested under PIS subject to FDI cap of 49%
Direct-to-home	Government route.	49% (FDI, NRI & PIO investments and portfolio investment). Within this limit, FDI component not to exceed 20%	To the extent invested under PIS subject to FDI cap of 49%	To the extent invested under PIS subject to FDI cap of 49%
Headend-In-The-Sky (HITS) Broadcasting Service	Automatic Route- up to 49%, Govt Route beyond 49% upto 74%	74% (total direct and indirect foreign investment including portfolio and FDI)	To the extent invested under PIS subject to FDI cap of 74%	To the extent invested under PIS subject to FDI cap of 74%



SECTORAL CAPS*

*Subject to other conditions specified in Consolidated FDI Policy issued by DIPP from time to time

Activity	Route	FDI	FII	QFI
SERVICES SECTOR				
Setting up of Up-linking HUB / Teleports	Government route.	49% (FDI & FII)	49% (FDI & FII)	N.A
Setting up of Up-linking a News & Current Affairs TV Channel	Government route.	26% (FDI & FII)	26% (FDI & FII)	N.A
Publishing of Newspaper and periodicals dealing with news and current affairs .	Government route.	26% (FDI investment and by NRIs/PIOs/FII)	To the extent invested subject to FDI cap of 26%	N.A
Publishing of Indian editions of foreign magazines dealing with news and current affairs .	Government route.	26% (FDI investment and by NRIs/PIOs/FII)	To the extent invested subject to FDI cap of 26%	N.A



SECTORAL CAPS*

*Subject to other conditions specified in Consolidated FDI Policy issued by DIPP from time to time

Activity	Route	FDI	FII	QFI	
SERVICES SECTOR					
Scheduled Transport Domestic Passenger Airline	Air Service/ Scheduled	Automatic	49% FDI (100% for NRIs)	N.A.	N.A.
Non-Scheduled Transport Service	Air	Automatic Route-up to 49% Government Route beyond 49% and up to 74%	74% FDI (100% for NRIs)	N.A.	N.A.
Ground Services subject to sectoral regulations and security clearance	Handling subject to regulations	Automatic Route-up to 49% Government Route beyond 49% and up to 74%	74% FDI (100% for NRIs)	N.A.	N.A.



SECTORAL CAPS*

*Subject to other conditions specified in Consolidated FDI Policy issued by DIPP from time to time

Activity	Route	FDI	FII	QFI
SERVICES SECTOR				
Banking – Private Sector	Automatic Route- up to 49% Government Route beyond 49% and up to 74%	74% including investment by FIIs	To the extent invested subject to FDI cap of 74%	N.A
Banking- Public Sector	Government Route	20% (FDI and Portfolio Investment)	To the extent invested under PIS subject to FDI cap of 20%	N.A
Commodity Exchanges	Government route. (For FDI)	49% (along with FII) Investment under FDI scheme limited to 26%.	49% (along with FDI) FII under PIS limited to 23% Note: FII purchases shall be restricted to secondary market only	N.A



SECTORAL CAPS*

*Subject to other conditions specified in Consolidated FDI Policy issued by DIPP from time to time

Activity	Route	FDI	FII	QFI
SERVICES SECTOR				
Credit Information Companies	Government Route	49% (FDI & FII)	49% (along with FDI) FII under PIS limited to 24% only in case of listed CICs	N.A
Infrastructure Companies in Securities Market	Government Route (For FDI)	49% (along with FII) Investment under FDI scheme limited to 26%.	49% (along with FDI) FII limited to 23% Note: FII can invest only through purchases in the secondary market	N.A
Telecom	Automatic route upto 49%, Government route- beyond 49% & up to 74%	74%. (Foreign Invst includes FIIs, NRIs, FCCBs, ADRs, GDRs & convertible preference shares held by foreign entity.	To the extent invested, subject to FDI cap of 74%	N.A



SECTORAL CAPS*

*Subject to other conditions specified in Consolidated FDI Policy issued by DIPP from time to time

Activity	Route	FDI	FII	QFI
SERVICES SECTOR				
Infrastructure Companies in Securities Market	Government Route (For FDI)	49% (along with FII) Investment under FDI scheme limited to 26%.	49% (along with FDI) FII limited to 23% [FII can invest only through purchases in the secondary market]	N.A
Asset Reconstruction Company	Government Route	49% of paid-up capital of ARC	<ul style="list-style-type: none"> Investments by FIIs are not permitted in the equity capital of ARCs FIIs registered with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. Up to 49 per cent of each tranche of scheme of SRs, investment by a single FII in each tranche of SRs shall not exceed 10 per cent 	N.A

• Details of FDI Limits of other sectors are stated in the Consolidated FDI Policy, issued by DIPP, effective from 10th April, 2012 and can be viewed at http://dipp.nic.in/English/Policies/FDI_Circular_01_2012.pdf



REPORTING REQUIREMENTS

FDI	FII	QFI
<p>Reporting of Inflow</p> <ul style="list-style-type: none"> • Receipt of consideration under the FDI scheme to be reported to the RBI through it's AD Category I bank, within 30 days from the date of receipt in Advance Reporting Form. • Details of receipt of amount of consideration, together with copies of FIRC/s along with KYC Report on the non-resident investor from the overseas bank remitting the amount' to be reported for allotment of Unique Identification Number (UIN). 	<ul style="list-style-type: none"> • Those mentioned under FDI • In case of FII Investment under a PIS in Credit Information Companies, any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement. • The FII shall ensure that the domestic custodian shall report to SEBI on a daily basis the transactions entered into by FII. 	<ul style="list-style-type: none"> • Those mentioned under FII • The information regarding ISIN wise and company wise aggregate QFI shareholding shall be provided by the depositories to RBI in a manner and format as stipulated by the RBI from time to time



REPORTING REQUIREMENTS- contd.

FDI	FII	QFI
<p>Reporting of Issue of Shares</p> <ul style="list-style-type: none"> • After issue of shares (including bonus and shares issued on rights basis and shares issued on conversion of stock option under ESOP scheme)/ convertible debentures / convertible preference shares, the Indian company has to file Form FC-GPR within 30 days from issue of shares. • Form FC-GPR has to be duly filled up and signed by MD/Director/Secretary of the Company & submitted to the Authorised Dealer along with: <ol style="list-style-type: none"> a) A certificate from Company Secretary in the prescribed form; (For companies with paid up capital with less than 5 crore, the certificate can be given by a practicing company Secretary) b) A Certificate from Statutory Auditor or Chartered Accountant indicating the manner of arriving at the price of the shares issued to foreign investors. 		



REPORTING REQUIREMENTS- contd.

FDI	FII	QFI
<p>Reporting of Issue of Shares</p> <p>c) The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD Category –I bank to the Regional Office concerned of the RBI under whose jurisdiction the registered office of the company is situated.</p> <p>d) Annual return on Foreign Liabilities and Assets should be filed on an annual basis by the Indian company, directly with the RBI, by 31st July every year, pertaining to all investments by way of direct/ portfolio investments/ reinvested earnings/ other capital made during the previous year upto March 31)</p> <p>e) Issue of bonus/rights shares or stock options to persons resident outside India directly or on amalgamation / merger/demerger with an existing Indian company, as well as issue of shares on conversion of ECB / royalty / lumpsum technical know-how fee / import of capital goods by units in SEZs, has to be reported in Form FC-GPR</p>		



REPORTING REQUIREMENTS- contd.

FDI	FII	QFI
<p>Reporting of Transfer of Shares</p> <ul style="list-style-type: none"> • Reporting of transfer of shares between residents and non-residents and vice-versa is to be made in Form FC-TRS within 60 days from the date of receipt of the amount of consideration, by the transferor/ transferee, resident in India. • Reporting of Non Cash: • In case of full conversion of ECB into equity, the Company shall report the conversion in Form FC-GPR to the Regional Office concerned of the RBI as well as in Form ECB-2 to the Department of Statistics and Information Management (DSIM) within 7 working days from the close of month to which it relates. Once reported, filing of Form ECB-2 in the subsequent months is not necessary. • In case of partial conversion of ECB, the Company shall report the converted portion in Form FC-GPR to the Regional Office concerned as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion. In the subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM 		



REPORTING REQUIREMENTS- contd.

FDI	FII	QFI
<p>Reporting of FCCB/ADR/GDR Issues</p> <ul style="list-style-type: none"> The Indian company issuing ADRs / GDRs has to furnish to the RBI, full details of such issue in the prescribed form 'Form DR', within 30 days from the date of closing of the issue. The company should also furnish a quarterly return in the prescribed form 'Form DR- Quarterly', to the RBI within 15 days of the close of the calendar quarter. The quarterly return has to be submitted till the entire amount raised through ADR/GDR mechanism is either repatriated to India or utilized abroad as per the extant Reserve Bank guidelines. 		



PRICING GUIDELINES

FDI

FII

QFI

1. Fresh Issue of Shares:

a. Listed Companies : on the basis of SEBI guidelines

a. Unlisted Companies: Not less than fair value of shares determined by SEBI registered Merchant Banker or a CA as per Discounted Free Cash Flow Method (DFCF Method)

The above pricing guidelines are also applicable for issue of shares against payment of lump sum technical know how fee / royalty or conversion of ECB into equity or capitalization of pre incorporation expenses/import payables (with prior approval of Government).

2. Preferential Allotment: The issue price shall not be less than the price as applicable to transfer of shares from resident to non-resident.

3. Rights Shares:

a. Listed Company : At a price determined by the Company

b. Unlisted Company: Price not less than the price at which the offer on right basis is made to the resident shareholders.



PRICING GUIDELINES- contd.

FDI

FII

QFI

4. Acquisition / transfer of existing share (private arrangement)

- a. Listed Company: Negotiated Price not less than price at which preferential allotment of shares can be made under the SEBI guidelines. The price per share arrived at should be certified by a SEBI registered Merchant Banker or a Chartered Accountant.
- b. Unlisted Company: Negotiated Price not less than the fair value of shares determined by SEBI regd. Merchant Banker or a CA as per DCF Method.

Further, transfer of existing shares by Non-resident (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI, FII) to Resident shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given above

The pricing of shares / convertible debentures / preference shares should be determined upfront at the time of issue of the instruments. In case of convertible instruments, the conversion formula has to be determined / fixed upfront, however the price at the time of conversion should not be less than the fair value worked out, at the time of issuance of these instruments, in accordance with the extant FEMA regulations.



SPECIFIC TAX PROVISIONS

FDI	FII	QFI
<p><u>Section 115 A of IT Act, 1961:</u></p> <ul style="list-style-type: none"> • Tax on Dividends other than dividends referred to in Section 115-O - @ 20% • Tax on income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under section 10(23D) of IT Act, 1961 or of the Unit Trust of India- @20% 	<p><u>Section 115AD of the IT Act:</u></p> <ul style="list-style-type: none"> • Tax on income received (other than income by way of dividends) in respect of securities (other than units specified in Section 115AB)- @ 20% • Short-term gain arising from transfer of such securities- <ol style="list-style-type: none"> a. In case of transactions chargeable to STT - @ 10% b. In case of other transactions - @ 30% • Income by way of long-term gains- @10% 	<p>Section 115 A applies</p>



SPECIFIC TAX PROVISIONS- contd.

FDI	FII	QFI
<p><u>Section 115AC of IT Act,1961:</u></p> <ul style="list-style-type: none"> • Tax on income of non- resident received by way of dividends on GDRs- @ 10%. • Tax on income by way of long-term capital gains arising from the transfer of GDRs - @ 10% <p><u>Section 115E of IT Act,1961:</u></p> <ul style="list-style-type: none"> • Tax on any income of a NRI from investment or income from long-term capital gains of an asset other than a specified asset - @ 20% • Tax on income by way of long term capital gains of NRI- @ 10% 	<p>Section 115AC applies</p>	<p>Section 115AC applies</p> <p>Section 115E applies.</p>



SPECIFIC TAX PROVISIONS- contd.

FDI	FII	QFI
<p><u>Short Term capital gains:</u></p> <p>a) In case of transactions chargeable to STT- @ 15%</p> <p>b) In case of transactions not chargeable to STT:</p> <ul style="list-style-type: none"> • Foreign Non Corporates - Progressive slab rates • Foreign Corporates- 40% 	<p>As stated in Section 115 AD of IT Act, 1961.</p>	<p>Short term capital gains as mentioned under FDI applies.</p>

Section 9 (Income deemed to accrue or arise in India), **Chapter IX** (Double taxation relief) and **Chapter X-A** (GAAR) of IT Act, applicable.



TAX PROVISIONS FOR OFFSHORE FUNDS

Section 115AB of IT Act, 1961:

- Tax on income received in respect of units purchased in foreign currency by overseas financial organisation @ 10%.
- Tax on income by way of long-term capital gains arising from the transfer of units purchased in foreign currency by overseas financial organisation - @ 10%